

### **REMARKS**

Claims 15-62 were pending in the Application before entrance of the present Amendment. Claims 15-62 stand rejected.

Claims 48, 49, 57, 58, 61, and 62 have been canceled. No claims have been amended, and no new claims have been added. Applicant submits that no new matter has been added by these amendments. Applicant respectfully requests reexamination and reconsideration of the case, as amended. Each of the rejections levied in the Office Action is addressed individually below.

**I. Rejection under 35 U.S.C. § 112, first paragraph.** The Examiner has maintained the rejection of claims 47-49 and 56-62 under 35 U.S.C. § 112, first paragraph. Without agreeing with the Examiner's argument, Applicant has canceled claims 48-49, 57-58, and 61-62 rendering the Examiner's rejection moot with respect to those claims. Applicant reserves the right to pursue the subject matter canceled from the present Application in a future case claiming priority to the present Application. Claim 59 has been left pending in the present Application. Applicant believes the Examiner inadvertently grouped this claim drawn to a pharmaceutical composition with the method claims.

Applicant respectfully submits that claims 47, 56, and 60 drawn to methods of inducing cytokine biosynthesis are enabled as evidenced by the example entitled "Cytokine Induction in Human Cells" starting on page 257. In particular, the induction of interferon-alpha and/or tumor necrosis factor-alpha by the claimed compounds may be tested in human peripheral blood mononuclear cells using the protocol described in this example. Applicant requests that the rejection be removed.

**II. Rejection under 35 U.S.C. § 102(e) over Lindstrom *et al.* (WO2005/0324846).** The Examiner has also maintained the rejection of claims 15-46 and 50-53 as being unpatentable over Lindstrom *et al.* (WO2005/0324846). Applicant has previously pointed out to the Examiner that the present case has an earlier priority date than Lindstrom *et al.* The present application is a U.S. national phase filing under 35 U.S.C. § 371 of international PCT application, PCT/US04/28021, filed August 27, 2004. The international PCT application claims priority to two U.S. provisional

patent applications, U.S.S.N. 60/498,270, filed August 27, 2003, and U.S.S.N. 60/581,254, filed June 18, 2004. The file history of the international PCT application includes this priority claim as evidenced by the first page of the published PCT application, WO 2005/020999. Furthermore, when the U.S national phase application was filed on February 14, 2006, a Preliminary Amendment was filed on the same day updating the “Related Applications” section of the patent application to include the priority information as stated above. A Request for a Corrected Filing Receipt was filed on March 16, 2009 asking that the priority information for this application be corrected and a corrected Filing Receipt be issued. Any error in the priority claim for this Application at the USPTO is not the Applicant’s fault, and Applicant requests that any errors in the priority claim be corrected as soon as possible.

Applicant respectfully submits that once the priority claims is corrected, this rejection will be moot since the present Application has an earlier priority date than Lindstrom *et al.*

**III. Provisional Obviousness-Type Double Patenting.** Claims 15-38, 46-49, and 52-62 stand provisionally rejected over claims 4-13, 23-49, 55-75, 78-79, 81-87, 89-111 of Lindstrom *et al.*, US 2007/0060754 for obviousness-type double patenting. Applicant wishes to defer commenting on this rejection until the claims of either application have been allowed.

Claims 15-62 also stand provisionally rejected over claims 1-79 of Griesgraberet *et al.*, US 2004/1076367 for obviousness-type double patenting. Applicant respectfully submits that this rejection is moot given that Griesgraberet *et al.* is abandoned.

In view of the above amendment and remarks, Applicant believes the pending application is in condition for allowance. A Notice to that effect is requested.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23/2825, under Docket No. C1271.70021US02, from which the undersigned is authorized to draw.

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Respectfully submitted,

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